

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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WENFANG LIU,

Plaintiff,

OPINION AND ORDER

v.

12-cv-288-wmc

STATE OF WISCONSIN DEPARTMENT  
OF HEALTH SERVICES and  
DEPARTMENT OF CHILDREN AND FAMILIES,

Defendants.

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Plaintiff Wenfang Liu brings this action under 42 U.S.C. § 1983, alleging that the Wisconsin Department of Health Services and Wisconsin Department of Children and Families has incorrectly concluded that she received an overassessment of food stamp benefits. The court has already allowed Liu to proceed without prepayment of the filing fee. The court must now determine whether her proposed action (1) is frivolous or malicious; (2) fails to state a claim upon which relief may be granted; or (3) seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). After examining the complaint, the court concludes that Liu may proceed on her claim, but that the Secretaries of the respective state agencies must be substituted as defendants for the state agencies themselves.

ALLEGATIONS OF FACT<sup>1</sup>

- The Wisconsin Department of Children and Families (DCF) “collects” the food stamp benefit on behalf of the Wisconsin Department of Health Services (DHS).

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<sup>1</sup> In addressing any pro se litigant’s complaint, the court must read the allegations generously, and hold the complaint “to less stringent standards than formal pleadings drafted by lawyers.” *Haines v. Kerner*, 404 U.S. 519, 521 (1972). Liu alleges, and the court assumes for purposes of this screening order only, the following facts.

- Sometime in 2011, plaintiff Wenfang Liu received a notice from the DHS stating that her food stamp benefit would be terminated on August 1, 2011. The notice gave two reasons for the termination: (1) “We are counting more of your income because your housing and/or utility expenses have gone down or ended”; and (2) “You are not a U.S. Citizen or an immigrant who is able to get this benefit.”<sup>2</sup>

- On April 13, 2012, Liu received a notice from the DCF stating “You have previously been notified that you have an unpaid debt for excess public assistance, of which the total amount of \$1,800.00 may be intercepted from any tax refunds or credits due you now or in the future.”

## OPINION

Liu maintains that she owes the state of Wisconsin nothing with regard to any food stamp benefit received and wants DCF and DHS to revoke the notice stating that she owes \$1800 for excess food-stamp payments. Because it is funded by the federal government, each state must administer the program in compliance with the Food Stamp Act and accompanying regulations. *See Stone v. Hamilton*, 308 F.3d 751, 752 (7th Cir. 2002) (citing 7 U.S.C. §§ 2011 & 2020, 7 C.F.R. § 273.18(a)(2)-(3)). The court understands Liu to be bringing claims for declaratory and injunctive relief against DCF and DHS for incorrectly interpreting the federal Food Stamp Act.

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<sup>2</sup> In a previous case, this court concluded that Liu failed to state a federal claim for the termination of this benefit. *See* Opinion and Order, case no. 11-cv-712-wmc (Dec. 20, 2011).

Section 1983 imposes liability on any person who, under color of law, “subject[s], or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and law,” *City of Rancho Palos Verdes, Cal. v. Abrams*, 544 U.S. 113, 119 (2005), but does not create substantive rights. *Padula v. Leimbach*, 656 F.3d 595, 600 (7th Cir. 2011). Rather, it operates as “a means for vindicating federal rights conferred elsewhere.” *Id.* at 600. Still, several courts have concluded that there is a private right of action against state officials for compliance with the Food Stamp Act. *See, e.g., Victorian v. Miller*, 813 F.2d 718, 720–21, 724 n.13 (5th Cir. 1987) (action against Texas Department of Human Services officials); *Haskins v. Stanton*, 794 F.2d 1273, 1274 (7th Cir. 1986) (holding indigent persons denied food stamp benefits had “a private right of action to enforce compliance with the Food Stamp Act by . . . state officials”); *Toney-Dick v. Doar*, 2013 WL 1314954, \*6-7 (S.D.N.Y. Mar. 18, 2013). Thus, Liu states a claim for relief pursuant to that Act and § 1983.

While Liu will be allowed to proceed beyond the screening stage, the only named defendants are two state agencies, neither of which is subject to suit because a state and its agencies are not “persons” under § 1983. *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 64 (1989). In claims for injunctive or declaratory relief, a state official sued in his official capacity is a person under § 1983. *Id.* at 71 n.10. As a result, one way to rectify this problem would be to dismiss the complaint without prejudice and allow Liu a chance to amend her complaint to include the proper parties, most likely the secretaries of the respective state agencies, but to avoid further delay in the disposition of this case, the

court will *sua sponte* substitute DHS Secretary Kitty Rhoades and DCF Secretary Eloise Anderson for their departments under Fed. R. Civ. P. 21 (“On motion or on its own, the court may at any time, on just terms, add or drop a party.”)

## ORDER

IT IS ORDERED that:

- (1) Plaintiff Wenfang Liu’s request to proceed on a § 1983 claim for the state’s failure to comply with the federal Food Stamp Act (dkt. #1) is GRANTED.
- (2) Kitty Rhoades and Eloise Anderson are substituted as the defendants in this case in the place of the Wisconsin Department of Health Services and Wisconsin Department of Children and Families.
- (3) The summons and complaint are being delivered to the U.S. Marshal for service on defendants.
- (4) For the time being, plaintiff must send defendants a copy of every paper or document she files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court’s copy that she has sent a copy to defendants or defendants’ attorney.
- (5) Plaintiff should keep a copy of all documents for her own files. If plaintiff does not have access to a photocopy machine, she may send out identical handwritten or typed copies of his documents.
- (6) Plaintiff is obligated to pay the unpaid balance of her filing fee.

Entered this 4th day of December, 2013.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge